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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 DENNIS THOMAS,

12 Plaintiff,

13 v.

14 HERNANDEZ, et al.,

15 Defendants.
16

No. 2:21-CV-1638-DJC-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's motion for the appointment of counsel
19 and for postponement of his case, ECF No. 37.

20 The United States Supreme Court has ruled that district courts lack authority to
21 require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist.
22 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the Court may request the
23 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935
24 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
25 A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success
26 on the merits and the ability of the plaintiff to articulate his claims on his own in light of the
27 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is
28 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional
9 circumstances to request counsel. Plaintiff's motion requests an attorney to "get things" Plaintiff
10 needs to fight his case. ECF No. 17. Plaintiff does not explain what things he needs or how an
11 attorney is necessary to obtain those things. See id.

12 Plaintiff alleges cruel and unusual punishment; his case does not immediately raise
13 any extraordinary complexities. See ECF No.1. Plaintiff also demonstrated sufficient ability to
14 articulate his claims through writing a coherent complaint. See id. At the current stage of the
15 proceedings before any discovery or dispositive motions, Plaintiff has not shown any particular
16 likelihood of success on the merits. Consequently, Plaintiff has failed to demonstrate the
17 existence of exceptional circumstances.

18 Plaintiff also seeks postponement of these proceedings. Plaintiff does not,
19 however, explain why the matter should be stayed or for how long. In any event, a 120-day stay
20 of these proceedings was imposed on October 6, 2023, pending a settlement conference which
21 has been set for March 19, 2024, before the Hon. Jeremy D. Peterson.

22 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for the
23 appointment of counsel and postponement of proceedings, ECF No. 37, is DENIED.

24 Dated: December 12, 2023



25 DENNIS M. COTA
26 UNITED STATES MAGISTRATE JUDGE